

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAMES C. STRADER,

Plaintiff,

v.

STATE OF KANSAS, et al.,

Defendants.

Case No. 19-3218-HLT

MEMORANDUM AND ORDER

This matter is a civil rights action filed by a prisoner in state custody. Plaintiff proceeds pro se and seeks leave to proceed in forma pauperis. For the reasons that follow, the Court directs plaintiff to file an amended complaint.

The motion to proceed in forma pauperis

This motion is governed by 28 U.S.C. § 1915(b). Because plaintiff is a prisoner, he must pay the full \$350.00 filing fee in installment payments taken from his prison trust account when he “brings a civil action or files an appeal in forma pauperis[.]” § 1915(b)(1). Pursuant to §1915(b)(1), the court must assess, and collect when funds exist, an initial partial filing fee calculated upon the greater of (1) the average monthly deposit in his account or (2) the average monthly balance in the account for the six-month period preceding the filing of the complaint. Thereafter, the plaintiff must make monthly payments of twenty percent of the preceding month’s income in his institutional account. § 1915(b)(2). However, a prisoner shall not be prohibited from bringing a civil action or appeal because he has no means to pay the initial partial filing fee. § 1915(b)(4).

The financial records submitted by the plaintiff show deposits to his institutional account but do not reflect the monthly balance. Accordingly, the Court has calculated the initial partial filing fee as \$2.00, based on the average monthly deposit of \$11.25 and rounded to the lower half dollar.

Screening

A federal court must conduct a preliminary review of any case in which a prisoner seeks relief against a governmental entity or an officer or employee of such an entity. *See* 28 U.S.C. §1915A(a). Following this review, the court must dismiss any portion of the complaint that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune from that relief. *See* 28 U.S.C. § 1915A(b).

In screening, a court liberally construes pleadings filed by a party proceeding pro se and applies “less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

To state a claim for relief under Section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48-49 (1988)(citations omitted).

To avoid a dismissal for failure to state a claim, a complaint must set out factual allegations that “raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The court accepts the well-pleaded allegations in the complaint as true and construes them in the light most favorable to the plaintiff. *Id.* However, “when the allegations in a complaint, however, true, could not raise a [plausible] claim of entitlement to relief,” the matter should be dismissed. *Id.* at 558. A court need not accept “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, “to state a claim in federal court, a complaint must explain what each defendant did to [the pro se plaintiff]; when the defendant did it; how the defendant’s action harmed [the plaintiff]; and what specific legal right the plaintiff believes the defendant violated.” *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007).

Analysis

The complaint, which lists 52 defendants and is supported by 159 pages of exhibits¹, does not comply with Rule 8 of the Federal Rules of Civil Procedure. The twin purposes of a complaint are (1) to give the defendants fair notice of the claims against them so that they may respond and (2) to allow the Court to conclude that the allegations, if proven, show that the plaintiff is entitled to relief. *See Monument Builders of Greater Kansas City, Inc. v. American Cemetery Ass'n of Kansas*, 891 F.2d 1473, 1480 (10th Cir. 1989). Rule 8(a) states that a complaint “must contain (1) a short and plain statement of the grounds for the court’s jurisdiction, ... (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought.” In addition, Rule 8(d)(1) requires that “[e]ach allegation must be simple, concise, and direct.” The Court will direct plaintiff to file an amended complaint that complies with the Federal Rules of Civil Procedure.

Plaintiff’s amended complaint must be submitted upon court-approved forms. An amended complaint is not an addendum or supplement to the original complaint but completely **supersedes** it. Therefore, any claims or allegations not presented in the amended complaint are no longer before the Court. Plaintiff may not simply refer to an earlier pleading; instead, the complaint must contain all allegations and claims that plaintiff intends to present in the action, including those to be retained from the original complaint. Plaintiff must include the case number of this action on the first page of the amended complaint.

Plaintiff must name every defendant in the caption of the amended complaint. *See Fed. R. Civ. P. 10(a)*. He must refer to each defendant in the body of the complaint and must allege specific facts that describe the allegedly unconstitutional acts or omissions by each defendant, including dates, locations, and circumstances.

¹ Some of the exhibits attached to the complaint address court personnel directly by name. The Court advises plaintiff that he must proceed with appropriate decorum and that the Court will strike materials that do not comply with this direction.

Plaintiff also must comply with Rules 20 and 18 of the Federal Rules of Civil Procedure in filing an amended complaint. Rule 20 governs permissive joinder of parties and provides, in relevant part:

(2) Defendants. Persons...may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a)(2).

Rule 18(a) governs joinder of claims and provides, in part: “A party asserting a claim ... may join ... as many claims as it has against an opposing party.” Fed. R. Civ. P. 18(a). While joinder is encouraged to promote judicial economy, the “Federal Rules do not contemplate joinder of different actions against different parties which present entirely different factual and legal issues.” *Zhu v. Countrywide Realty Co., Inc.*, 160 F.Supp. 2d 1210, 1225 (D.Kan. 2001)(citation omitted). *See also George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)(Under Rule 18(a), “multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.”).

Requiring compliance with the federal rules on joinder of parties and claims in prisoner suits prevents “the sort of morass [a multiple claim, multiple defendant] suit produce[s].” *Id.* It also prevents a prisoner from avoiding the fee obligations and the three-strike provision of the Prison Litigation Reform Act. *Id.* (Rule 18(a) ensures “that prisoners pay the required filing fees – for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees.”).

Accordingly, under Rule 18(a), a plaintiff may bring multiple claims against a single defendant. Under Rule 20(a)(2), he may join in one action any other defendants who were involved in the same transaction or occurrence and as to whom there is a common issue of law or fact. He may not bring multiple claims against multiple defendants unless the nexus required in Rule 20(a)(2) is demonstrated with respect to all defendants named in the action.

The Federal Rules authorize the court, on its own initiative at any stage of the litigation, to drop any party and sever any claim. Fed. R. Civ. P. 21; *Nasious*, 415 F. App'x at 881 (to remedy misjoinder, the court has two options: (1) misjoined parties may be dropped or (2) any claims against misjoined parties may be severed and proceeded with separately).

In any amended complaint, plaintiff must set forth the transactions or occurrences which he intends to pursue in accordance with Rules 18 and 20 and must limit the facts and allegations to properly-joined parties and events. Plaintiff must allege facts in his complaint showing that all counts arise out of the same transaction, occurrence, or series of transactions; and that a question of law or fact common to all named defendants will arise in the action.

Plaintiff's motion to recuse

Plaintiff moves for the recusal of the Honorable Sam A. Crow. Because this matter has been reassigned, this motion is denied as moot.

THE COURT THEREFORE ORDERS that plaintiff is granted to and including **November 13, 2019**, to submit an initial partial filing fee of \$2.00 to the clerk of the court.

THE COURT FURTHER ORDERS that plaintiff is granted to and including **November 13, 2019**, to submit an amended complaint that complies with the Federal Rules of Civil Procedure and the directions of the Court.

THE COURT FURTHER ORDERS that plaintiff shall file no other documents until further order of the court.

THE COURT FURTHER ORDERS that plaintiff's motion to recuse the Honorable Sam A. Crow (Doc. 6) is denied as moot.

IT IS SO ORDERED.

Dated: October 30, 2019

/s/ Holly L. Teeter
HOLLY L. TEETER
UNITED STATES DISTRICT JUDGE